

SENATE BUSINESS, LABOR AND ECONOMIC AFFAIRS COMMITTEE

HB 255 Clarify Cosmetology Services for Disabled and Homebound

For the record, I'm Rose Hughes, Executive Director of the Montana Health Care Association (MHCA). MHCA represents nursing homes and assisted living facilities throughout the state of Montana.

We support HB 255.

HB 255 clarifies that Montana's disabled and homebound residents - whether living at home or in a health care facility - are able to receive cosmetology and barbering services in their place of residence.

It is often difficult for these people to go outside their place of residence to receive these services and they are very important services in terms of quality of life, dignity and well being. These services make people feel good!

The issue this bill addresses is whether health care facilities have to be licensed as a beauty shop in order for their residents to receive services by licensed cosmetologists and barbers.

The legislature has previously made provisions to allow an exception from the licensing requirements for a "salon" for homebound or disabled individuals, but over the years questions have arisen over the interpretation of the current law. This bill clarifies the current law to resolve these questions in the future.

This bill:

1. Defines what a "place of residence" is. It includes the person's "home" as well as assisted living facilities, intermediate care facilities for the developmentally disabled, a hospice, a critical access hospital, a long term

care facility or a residential treatment facility. These terms (other than "home") are defined under 50-5-101, MCA.

2. Amends the definition of a "salon or shop" (which must be licensed) to exclude from licensure "a room in a place of residence" that is used for cosmetology, barbering, and the like. However, if the owner, operator or manager allows the room to be used to serve the general public, i.e., nonresidents, for compensation, it must be licensed.

These changes should assure that the disabled and homebound exception will function as it was intended - to allow licensed individuals to provide services in a place of residence - without the place of residence being licensed.

Thank you for the opportunity to appear before you. I would be happy to answer any questions you may have or to provide any additional information you may need.

History: En. 66-403.1 by Sec. 36, Ch. 350, L. 1974; R.C.M. 1947, 66-403.1; amd. Sec. 10, Ch. 544, L. 1981; amd. Sec. 16, Ch. 565, L. 1983; amd. Sec. 91, Ch. 370, L. 1987; amd. Sec. 1, Ch. 465, L. 1989; Sec. 37-30-425, MCA 1987; redes. 37-30-502 by Sec. 3, Ch. 465, L. 1989.

CHAPTER 31 BARBERING, COSMETOLOGY, ELECTROLOGY, ESTHETICS, AND MANICURING

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Part 1 General

37-31-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of barbers and cosmetologists provided for in 2-15-1747.
- (2) "Booth" means any part of a salon or shop that is rented or leased for the performance of barbering, cosmetology, electrology, esthetics, or manicuring services, as specified in 39-51-204.
- (3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (4) (a) "Electrology" means the study of and the professional practice of permanently removing superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle. Electrology includes electrolysis and thermolysis. Electrology may include the use of waxes for epilation and the use of chemical depilatories.
(b) Electrology does not include pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.
- (5) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

(6) "Esthetics" means skin care of the body, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

(7) "Manicuring" includes care of the nails, the hands, the lower arms, the feet, and the lower legs and the application and maintenance of artificial nails.

(8) "Practice or teaching of barbering" means any of the following practices performed for payment, either directly or indirectly, upon the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:

- (a) shaving or trimming a beard;
- (b) cutting, styling, coloring, or waving hair;
- (c) straightening hair by the use of chemicals;
- (d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;
- (e) shampooing hair, applying hair tonic, or bleaching or highlighting hair; or
- (f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

(9) (a) "Practice or teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in salons or shops, in booths, or by itinerant cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair and body.

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

(10) "Salon or shop" means the physical location in which a person licensed under this chapter practices barbering, cosmetology, electrology, esthetics, or manicuring.

(11) "School" means a program and location approved by the board with respect to its course of instruction for training persons in barbering, cosmetology, electrology, esthetics, or manicuring and that meets any other criteria established by the board.

History: En. Sec. 2, Ch. 104, L. 1929; re-en. Sec. 3228.2, R.C.M. 1935; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955; amd. Sec. 2, Ch. 244, L. 1961; amd. Sec. 1, Ch. 175, L. 1974; amd. Sec. 64, Ch. 350, L. 1974; R.C.M. 1947, 66-802; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 260, L. 1985; amd. Sec. 1, Ch. 602, L. 1985; amd. Sec. 2, Ch. 88, L. 1989; amd. Sec. 1, Ch. 473, L. 1993; amd. Sec. 1, Ch. 305, L. 1997; amd. Sec. 17, Ch. 491, L. 1997; amd. Sec. 137, Ch. 483, L. 2001; amd. Sec. 5, Ch. 243, L. 2003.

37-31-102. Exemptions. The provisions of this chapter do not prohibit:

- (1) service in case of emergency or domestic administration without compensation;
- (2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or
- (3) barbering, cosmetology, or esthetics services, including the application of masks, makeup, or other theatrical devices, in the course of or incidental to a theatrical or other visual arts production, including television or motion pictures, by persons employed or under contract to provide these services.

History: En. Sec. 18, Ch. 104, L. 1929; re-en. Sec. 3228.18, R.C.M. 1935; amd. Sec. 2, Ch. 101, L. 1977; R.C.M. 1947, 66-818; amd. Sec. 6, Ch. 243, L. 2003; amd. Sec. 2, Ch. 244, L. 2003.

37-31-103. Purpose. It is a matter of legislative policy in the state of Montana that the practice of barbering, cosmetology, electrology, esthetics, and manicuring affects the public health, safety, and welfare and is subject to regulation and control in order to protect the public from unauthorized and unqualified practice.

History: En. Sec. 3, Ch. 243, L. 2003.

Part 2

Board of Barbers and Cosmetologists

Part Cross-References

Seal defined, 1-4-201.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1747.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-31-201. Organization — seal. (1) The board shall annually, before March 1, elect from its number a president, vice-president, and secretary-treasurer.

(2) The board shall adopt a seal and authenticate its acts.

History: (1) En. Sec. 5, Ch. 104, L. 1929; re-en. Sec. 3228.5, R.C.M. 1935; amd. Sec. 5, Ch. 222, L. 1939; amd. Sec. 66, Ch. 350, L. 1974; Sec. 66-805, R.C.M. 1947; (2) En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; Sec. 66-806, R.C.M. 1947; R.C.M. 1947, 66-805, 66-806(2).

37-31-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 25, Ch. 474, L. 1981.

37-31-203. Rulemaking powers. The board shall prescribe rules for:

(1) the conduct of board business;

(2) the qualification and licensure of applicants to practice barbering, cosmetology, electrology, esthetics, or manicuring or to teach barbering, cosmetology, electrology, esthetics, or manicuring;

(3) the regulation and instruction of apprentices and students;

(4) the conduct of schools of barbering, cosmetology, electrology, esthetics, and manicuring for apprentices and students;

(5) the qualification and licensure of applicants for booth rental licenses; and

(6) generally the conduct of the persons, firms, or corporations affected by this chapter.

History: En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; R.C.M. 1947, 66-806(1); amd. Sec. 15, Ch. 22, L. 1979; amd. Sec. 2, Ch. 602, L. 1985; amd. Sec. 3, Ch. 88, L. 1989; amd. Sec. 2, Ch. 305, L. 1997; amd. Sec. 7, Ch. 243, L. 2003; amd. Sec. 82, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (2) after "qualification" deleted "examination" and after "and" substituted "licensure" for "registration"; in (5) after "qualification and" substituted "licensure" for "registration"; and made minor changes in style. Amendment effective July 1, 2005.

37-31-204. Sanitary rules. The board, subject to the approval of the department of public health and human services, shall prescribe sanitary rules that it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases.

History: En. Sec. 12, Ch. 104, L. 1929; re-en. Sec. 3228.12, R.C.M. 1935; amd. Sec. 72, Ch. 350, L. 1974; R.C.M. 1947, 66-812; amd. Sec. 68, Ch. 418, L. 1995; amd. Sec. 97, Ch. 546, L. 1995.

Part 3 Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt and enforce licensing and certification rules and to adopt rules on conduct, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it is unlawful to:

- (a) practice barbering, cosmetology, electrology, esthetics, or manicuring for compensation;
- (b) own, manage, operate, or conduct a school of barbering, cosmetology, electrology, esthetics, or manicuring;
- (c) manage or operate a salon or shop or a booth; or
- (d) teach in a school of barbering, cosmetology, electrology, esthetics, or manicuring.
- (2) It is unlawful:
 - (a) for a person who owns, manages, or controls a salon or shop to employ or use an unlicensed person as a barber, cosmetologist, electrologist, esthetician, or manicurist;
 - (b) to operate a school of barbering, cosmetology, electrology, esthetics, or manicuring without complying with all of the regulations of 37-31-311;
 - (c) to practice barbering, cosmetology, electrology, esthetics, or manicuring in any place other than in a licensed salon or shop as provided in this chapter, except when a licensee is requested:
 - (i) by a customer to go to a place other than a licensed salon or shop and is sent to the customer from a licensed salon or shop; or
 - (ii) by a customer with a disability or homebound customer to go to the customer's place of residence; or
 - (d) to violate any of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(A), (B); amd. Sec. 3, Ch. 602, L. 1985; amd. Sec. 4, Ch. 88, L. 1989; amd. Sec. 1, Ch. 23, L. 1993; amd. Sec. 2, Ch. 473, L. 1993; amd. Sec. 3, Ch. 305, L. 1997; amd. Sec. 28, Ch. 472, L. 1997; amd. Sec. 8, Ch. 243, L. 2003.

37-31-302. License required to practice, teach, or operate salon or shop, booth, or school. (1) A person may not practice or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license.

(2) A place may not be used or maintained for the teaching of barbering, cosmetology, electrology, esthetics, or manicuring for compensation unless licensed as a school.

(3) A person may not operate or manage a salon or shop without a license or a temporary operating permit as provided in 37-31-312.

(4) A person may not operate or conduct a school of barbering, cosmetology, electrology, esthetics, or manicuring or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license to teach barbering, cosmetology, electrology, esthetics, or manicuring.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, corporation, or other legal entity desiring to operate a salon or shop shall apply to the department for a license. The application must be accompanied by the license fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid.

History: En. Sec. 1, Ch. 104, L. 1929; re-en. Sec. 3228.1, R.C.M. 1935; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955; amd. Sec. 1, Ch. 244, L. 1961; amd. Sec. 1, Ch. 85, L. 1974; amd. Sec. 63, Ch. 350, L. 1974; R.C.M. 1947, 66-801; amd. Sec. 4, Ch. 106, L. 1981; amd. Sec. 4, Ch. 602, L. 1985; amd. Sec. 5, Ch. 88, L. 1989; amd. Sec. 3, Ch. 473, L. 1993; amd. Sec. 4, Ch. 305, L. 1997; amd. Sec. 38, Ch. 492, L. 1997; amd. Sec. 9, Ch. 243, L. 2003; amd. Sec. 1, Ch. 194, L. 2005; amd. Sec. 83, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 194 in (3) at end after "license" inserted "or a temporary operating permit as provided in 37-31-312". Amendment effective April 7, 2005.

Chapter 467 in (2) near end after "compensation" substituted "unless licensed" for "except under a certificate of registration"; and in (6) at end of first sentence before "license" deleted "certificate of registration and" and at end of second sentence before "fee" substituted "license" for "registration". Amendment effective July 1, 2005.

37-31-303. Application for license to practice or teach. An applicant for a license to practice or teach barbering, cosmetology, electrology, esthetics, or manicuring shall file an application provided by the department and pass the examination prescribed by the board to qualify for licensure.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(3); amd. Sec. 5, Ch. 602, L. 1985; amd. Sec. 6, Ch. 88, L. 1989; amd. Sec. 10, Ch. 243, L. 2003; amd. Sec. 84, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 near middle after "application" substituted "provided by the department" for "prescribed by the board" and deleted former second sentence that read: "The license must be renewed in accordance with the provisions of 37-31-322"; and made minor changes in style. Amendment effective July 1, 2005.

37-31-304. Qualifications of applicants for license to practice. (1) Before a person may practice:

- (a) barbering, the person shall obtain a license to practice barbering from the department;
- (b) cosmetology, the person shall obtain a license to practice cosmetology from the department;
- (c) electrology, the person shall obtain a license to practice electrology from the department;
- (d) manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology; or
- (e) esthetics, the person shall obtain a license to practice esthetics from the department unless the person is already licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice barbering, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 1,500 hours in a licensed barbering school and must have received a diploma from the barbering school or must have completed the course of study in barbering at a school of cosmetology authorized to offer a course of study in barbering prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file an application and deposit the application fee with the department and pass an examination as to fitness to practice barbering.

(c) The board shall issue a license to practice barbering, without examination, to a person licensed in another state if the board determines that:

(i) the other state's course of study hour requirement is equal to or greater than the hour requirement in this state; and

(ii) the person's license from the other state is current and the person is not subject to pending or final disciplinary action for unprofessional conduct or impairment.

(3) (a) To be eligible to take the examination to practice cosmetology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 2,000 hours in a licensed cosmetology school and must have received a diploma from the cosmetology school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection (3)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice cosmetology.

(4) (a) To be eligible to take the examination to practice electrology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of education, training, and experience in the field of electrology as prescribed by the board by rule.

(b) A person qualified under subsection (4)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice electrology.

(5) (a) To be eligible to take the examination to practice manicuring, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board in a licensed school of

cosmetology or a licensed school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent or a certificate of completion from a vocational-technical program. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (5)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice manicuring.

(6) (a) To be eligible to take the examination to practice esthetics, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board and consisting of not less than 650 hours of training and instruction in a licensed school of cosmetology or a licensed school of esthetics. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (6)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice esthetics.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(1); amd. Sec. 2, Ch. 260, L. 1985; amd. Sec. 6, Ch. 602, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 520, L. 1989; amd. Sec. 4, Ch. 473, L. 1993; amd. Sec. 26, Ch. 308, L. 1995; amd. Sec. 5, Ch. 305, L. 1997; amd. Sec. 11, Ch. 243, L. 2003; amd. Sec. 85, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (2)(a) in fourth sentence after "hours in a" substituted "licensed" for "registered"; in (2)(b) near middle after "file" substituted "an application" for "a written application"; in (3)(a) in fourth sentence after "hours in a" substituted "licensed" for "registered"; in (3)(b) and in (4)(b) near middle after "file" substituted "an application" for "a written application"; in (5)(a) in second sentence in two places substituted reference to licensed school for reference to registered school; in (5)(b) near middle after "file" substituted "an application" for "a written application"; in (6)(a) in second sentence in two places substituted reference to licensed school for reference to registered school; in (6)(b) near middle after "file" substituted "an application" for "a written application"; and made minor changes in style. Amendment effective July 1, 2005.

37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach manicuring or esthetics to persons seeking only to be licensed to practice manicuring or esthetics or to teach cosmetology, the person shall obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma that is recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a licensed school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(3) Before a person may teach manicuring to a person seeking only to be licensed to practice manicuring, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach manicuring.

(4) To be eligible to take an examination to obtain a license to teach manicuring, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice manicuring or cosmetology issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a manicurist or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(5) Before a person may teach esthetics to a person seeking only to be licensed to practice esthetics, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach esthetics.

(6) To be eligible to take an examination to obtain a license to teach esthetics, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice esthetics or cosmetology issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as an esthetician or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(7) To be eligible to take an examination to obtain a license to teach barbering, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice barbering issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 500 hours of student teacher training; or

(ii) have been actively engaged as a barber for 3 continuous years immediately before taking the teacher's examination.

(8) To be eligible to take an examination for a license to teach electrology, a person must:

(a) be a high school graduate or possess an equivalent of a high school diploma recognized by the superintendent of public instruction;

(b) have a 100-hour teacher certificate; and

(c) have been actively engaged as an electrologist for 3 continuous years immediately preceding taking the teacher's examination.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(2); amd. Sec. 5, Ch. 106, L. 1981; amd. Sec. 3, Ch. 260, L. 1985; amd. Sec. 7, Ch. 602, L. 1985; amd. Sec. 5, Ch. 473, L. 1993; amd. Sec. 6, Ch. 305, L. 1997; amd. Sec. 12, Ch. 243, L. 2003; amd. Sec. 86, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (1)(b)(i) near middle after "from a" substituted "licensed" for "registered"; and in (4)(b)(i), (6)(b)(i), and (7)(b)(i) near middle after "from a" deleted "registered". Amendment effective July 1, 2005.

37-31-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-808.1 by Sec. 5, Ch. 533, L. 1977; R.C.M. 1947, 66-808.1; amd. Sec. 6, Ch. 106, L. 1981.

37-31-307. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(5); amd. Sec. 1, Ch. 460, L. 1979; amd. Sec. 7, Ch. 106, L. 1981; amd. Sec. 1, Ch. 29, L. 1989.

37-31-308. Exemption for persons with disabilities. A person with a physical disability who is trained for barbering, cosmetology, electrology, esthetics, or manicuring by the department of public health and human services is, for a period of 1 year immediately following graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of public health and human services that a department of public health and human services beneficiary has successfully completed the required training in a school of barbering, cosmetology, electrology, esthetics, or manicuring, the department shall issue the person the necessary license to practice the profession in this state.

History: (1), (3)En. Sec. 8, Ch. 104, L. 1929; amd. Sec. 1, Ch. 85, L. 1935; re-en. Sec. 3228.8, R.C.M. 1935; amd. Sec. 7, Ch. 222, L. 1939; amd. Sec. 69, Ch. 350, L. 1974; Sec. 66-808, R.C.M. 1947; (2)En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; Sec. 66-803, R.C.M. 1947; R.C.M. 1947, 66-803(4), 66-808; amd. Sec. 8, Ch. 106, L. 1981; amd. Sec. 4, Ch. 260, L. 1985; amd. Sec. 8, Ch. 602, L. 1985; amd. Sec. 7, Ch. 88, L. 1989; amd. Sec. 6, Ch. 473, L. 1993; amd. Sec. 98, Ch. 546, L. 1995; amd. Sec. 7, Ch. 305, L. 1997; amd. Sec. 29, Ch. 472, L. 1997; amd. Sec. 13, Ch. 243, L. 2003; amd. Sec. 87, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) that read: "(1) Examinations for a license to practice barbering, cosmetology, electrology, esthetics, or manicuring or to teach barbering, cosmetology, electrology, esthetics, or manicuring must be held at places and times specified by the board. The examinations may not be confined to a specific method or system. The board may contract with an outside agency for examination and grading services"; near end of second sentence after "necessary" deleted "certificate or"; and made minor changes in style. Amendment effective July 1, 2005.

37-31-309. Booth rental license. No person may receive a booth rental license under 37-31-302 without proving to the satisfaction of the board that the booth will be used and maintained in compliance with the rules and regulations promulgated by the board, including sanitary rules prescribed under 37-31-204.

History: En. Sec. 9, Ch. 88, L. 1989.

37-31-310 reserved.

37-31-311. Schools — license — requirements — bond — curriculum. (1) A person, firm, partnership, corporation, or other legal entity may not operate a school for the purpose of teaching barbering, cosmetology, electrology, esthetics, or manicuring for compensation unless licensed by the department. Application for the license must be filed with the department on an approved form.

(2) A school for teaching barbering may not be granted a license unless the school complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers determined by the board to be necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of barbering.

(c) It maintains a school term of not less than 1,500 hours and a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of barbering.

(3) A school for teaching cosmetology may not be granted a license unless the school complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers determined by the board to be necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of cosmetology.

(c) It maintains a school term of not less than 2,000 hours and a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of cosmetology.

(4) A school for teaching electrology may not be granted a license unless the school maintains a school term and a course of practical training and technical instruction prescribed by the board, and possesses apparatus and equipment necessary for teaching electrology as prescribed by the board.

(5) A school for teaching manicuring may not be granted a license unless the school complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of manicuring.

(b) It maintains a school term and a course of practical training and technical instruction as prescribed by the board.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of manicuring.

(6) A school for teaching esthetics may not be granted a license unless the school complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of esthetics.

(b) It maintains a school term and a course consisting of not less than 650 hours of practical training and technical instruction as prescribed by the board.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of esthetics.

(7) Licenses for schools of barbering, cosmetology, electrology, esthetics, or manicuring may be refused, revoked, or suspended as provided in 37-31-331.

(8) A teacher or student teacher may not be permitted to practice barbering, cosmetology, electrology, esthetics, or manicuring on the public in a school of barbering, cosmetology, electrology, esthetics, or manicuring. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(9) The board may make further rules necessary for the proper conduct of schools of barbering, cosmetology, electrology, esthetics, and manicuring.

(10) The board shall require the person, firm, partnership, corporation, or other legal entity operating a school of barbering, cosmetology, electrology, esthetics, or manicuring to furnish a bond or other security in the amount of \$5,000 and in a form and manner prescribed by the board.

(11) A professional salon or shop may not be operated in connection with a school of barbering, cosmetology, electrology, esthetics, or manicuring.

(12) The board may, by rule, establish a suitable curriculum for teachers' training in licensed schools of barbering, cosmetology, electrology, esthetics, or manicuring.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(6) thru (8); amd. Sec. 9, Ch. 602, L. 1985; amd. Sec. 7, Ch. 473, L. 1993; amd. Sec. 8, Ch. 305, L. 1997; amd. Sec. 14, Ch. 243, L. 2003; amd. Sec. 88, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) near end of first sentence after "unless" substituted "licensed by" for "a certificate of registration has been first obtained from" and in second sentence at beginning after "for the" substituted "license" for "certificate" and at end after "department on" substituted "an approved form" for "a form prescribed by the board"; in (2) after "granted a" substituted "license" for "certificate of registration"; in (2)(c) in first sentence after "hours and" deleted "prescribes"; in (3) after "granted a" substituted "license" for "certificate of registration"; in (3)(c) in first sentence after "hours and" deleted "prescribes"; in (4) after "granted a" substituted "license" for "certificate of registration", after "term" deleted "prescribes", and after "instruction" inserted "prescribed by the board"; in (5) after "granted a" substituted "license" for "certificate of registration"; in (5)(b) after "term and" deleted "prescribes"; in (6) after "granted a" substituted "license" for "certificate of registration"; in (7) at beginning after "Licenses" deleted "or certificates of registration"; in (12) near middle after "training in" substituted "licensed" for "registered"; and made minor changes in style. Amendment effective July 1, 2005.

37-31-312. Inspection — temporary permits. (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting salons or shops and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a salon or shop, booth, school of barbering, school of cosmetology, school of electrology, school of esthetics, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee or school to permit the inspection during business hours is cause for revocation of a licensee's or school's license.

(2) When an owner or operator applies for a shop or salon license and pays licensure and inspection fees prescribed by the board, the board:

(a) may authorize the department to grant to a new salon or shop a temporary operating permit; or

(b) shall, in order to avoid a disruption of business, authorize the department to grant a temporary operating permit to an existing shop or salon whose owner or operator is currently in good standing with the board, as defined by the board, and who is relocating to a new location. An owner or operator of an existing shop or salon may not receive a temporary operating permit under this section within 90 days of a license renewal date.

(3) A temporary operating permit granted pursuant to subsection (2) authorizes the salon or shop to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever comes first. A temporary permit is not renewable.

(4) The department shall require an inspector appointed under subsection (1) to conduct an annual inspection of each salon or shop in the state.

History: (1) En. Sec. 13, Ch. 104, L. 1929; re-en. Sec. 3228.13, R.C.M. 1935; amd. Sec. 11, Ch. 222, L. 1939; amd. Sec. 73, Ch. 350, L. 1974; Sec. 66-813, R.C.M. 1947; (2), (3) En. Sec. 66-813.1 by Sec. 2, Ch. 85, L. 1974; amd. Sec. 2, Ch. 305, L. 1977; Sec. 66-813.1, R.C.M. 1947; R.C.M. 1947, 66-813, 66-813.1; (4) En. Sec. 9, Ch. 106, L. 1981; amd. Sec. 56, Ch. 345, L. 1981; amd. Sec. 5, Ch. 260, L. 1985; amd. Sec. 10, Ch. 602, L. 1985; amd. Sec. 8, Ch. 88, L. 1989; amd. Sec. 1, Ch. 458, L. 1991; amd. Sec. 8, Ch. 473, L. 1993; amd. Sec. 9, Ch. 305, L. 1997; amd. Sec. 15, Ch. 243, L. 2003; amd. Sec. 2, Ch. 194, L. 2005; amd. Sec. 89, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 194 deleted former (2) that read: "(2) Upon application for a license, a salon or shop shall pay an initial inspection fee prescribed by the board"; at beginning of (2) inserted "When an owner or operator applies for a shop or salon license and pays licensure and inspection fees prescribed by the board"; in (2)(a) near middle after "grant to a" inserted "new", after "shop" deleted "upon payment of the initial inspection fee", after "temporary" inserted "operating", and after "permit" deleted "authorizing the salon or shop to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever occurs first"; inserted (2)(b) requiring the board to authorize a temporary permit; inserted (3) limiting operation under a temporary permit; and made minor changes in style. Amendment effective April 7, 2005.

Chapter 467 in (1) at end of second sentence after "licensee's" inserted "or school's" and after "license" deleted "or a school's certificate of registration". Amendment effective July 1, 2005.

37-31-313 through 37-31-320 reserved.

37-31-321. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 7, Ch. 104, L. 1929; re-en. Sec. 3228.7, R.C.M. 1935; amd. Sec. 6, Ch. 222, L. 1939; amd. Sec. 68, Ch. 350, L. 1974; R.C.M. 1947, 66-807; amd. Sec. 16, Ch. 243, L. 2003.

37-31-322. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 16, Ch. 104, L. 1929; re-en. Sec. 3228.16, R.C.M. 1935; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967; amd. Sec. 75, Ch. 350, L. 1974; amd. Sec. 3, Ch. 305, L. 1977; R.C.M. 1947, 66-816; amd. Sec. 16, Ch. 22, L. 1979; amd. Sec. 57, Ch. 345, L. 1981; amd. Sec. 6, Ch. 260, L. 1985; amd. Sec. 11, Ch. 602, L. 1985; amd. Sec. 9, Ch. 473, L. 1993; amd. Sec. 94, Ch. 429, L. 1995; amd. Sec. 17, Ch. 243, L. 2003; amd. Sec. 38, Ch. 271, L. 2003.

37-31-323. Fees. (1) Fees for licenses must be paid to the department in amounts prescribed by the board.

(2) The license fees must be paid in advance to the department unless otherwise provided by board rule.

(3) Other or additional license fees may not be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of barbering, cosmetology, electrology, esthetics, or manicuring.

History: En. Sec. 15, Ch. 104, L. 1929; re-en. Sec. 3228.15, R.C.M. 1935; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. Sec. 1, Ch. 131, L. 1963; amd. Sec. 1, Ch. 324, L. 1971; amd. Sec. 74, Ch. 350, L. 1974; amd. Sec. 4, Ch. 533, L. 1977; R.C.M. 1947, 66-815; amd. Sec. 10, Ch. 106, L. 1981; amd. Sec. 58, Ch. 345, L. 1981; amd. Sec. 18, Ch. 243, L. 2003; amd. Sec. 90, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) near beginning after "licenses" deleted "and certificates of registration"; in (2) near beginning after "license" deleted "and registration"; and in (3) near beginning after "license" deleted "or registration". Amendment effective July 1, 2005.

37-31-324. Deposit of fees. All fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 1, Ch. 277, L. 1983.

37-31-325 through 37-31-330 reserved.

37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, corporation, or other legal entity operating a salon or shop or a school of barbering, cosmetology, electrology, esthetics, or manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health and human services for the regulation of salons or shops or schools of barbering, cosmetology, electrology, esthetics, or manicuring;

(c) gross malpractice;

(d) continued practice by a person who knowingly has an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of any habit-forming drug;

(f) permitting a certificate of registration or license to be used when the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) The board may not refuse to authorize the department to issue or renew a license or to revoke or suspend a license already issued until after notice and opportunity for a hearing.

History: En. Sec. 11, Ch. 104, L. 1929; re-en. Sec. 3228.11, R.C.M. 1935; amd. Sec. 10, Ch. 222, L. 1939; amd. Sec. 71, Ch. 350, L. 1974; R.C.M. 1947, 66-811; amd. Sec. 12, Ch. 602, L. 1985; amd. Sec. 10, Ch. 473, L. 1993; amd. Sec. 69, Ch. 418, L. 1995; amd. Sec. 99, Ch. 546, L. 1995; amd. Sec. 10, Ch. 305, L. 1997; amd. Sec. 19, Ch. 243, L. 2003.

37-31-332. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(9).

37-31-333. Appeal from actions of board. An appeal may be taken from any actions of the board to the district court of the county in which the applicant resides.

History: En. Sec. 14, Ch. 104, L. 1929; re-en. Sec. 3228.14, R.C.M. 1935; R.C.M. 1947, 66-814.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

37-31-334. Penalty — injunction. (1) The commission of any of the acts prohibited as provided in 37-31-301 or the violation of any other provision in this chapter shall be a misdemeanor punishable by a fine or imprisonment or both fine and imprisonment.

(2) Regardless of any penalties provided in this chapter and as an additional remedy, the district courts of the state of Montana are vested with jurisdiction to restrain and enjoin any violation or threatened violation of the requirements of this chapter as a nuisance per se or otherwise and the board, the attorney general, or any county attorney may institute proceedings in equity for the purpose of obtaining equitable relief against violations of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(C), (D).

Cross-References

Duties of Attorney General, 2-15-501.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Nuisances, Title 27, ch. 30.

Disciplinary authority of boards — injunctions, 37-1-136.

Penalty when none specified, 46-18-212.